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# Regional Constitutional Justice in the Context of Russia's Aspiration to be a Rule of Law State

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## **Abstract**

This paper examines regional constitutional justice in Russia as a microcosm of the struggle for the judicial branch of state power to assert its importance, in particular in relation to separation of powers. We consider the situation of republican constitutional courts and regional charter courts which have been established in some places to oversee compliance with the republican constitution or regional charter. We note that the limited number of these courts contrasts strongly with the widespread institution of the regional ombudsman (plenipotentiary for human rights). We also see that in recent years courts in some regions have encountered a pushback from the other branches of state power. The strength of the resulting defence of the courts' legal status gives us some cause for optimism that the principles of separation of powers and rule of law are being strongly supported in some regions.

## **Keywords**

Russia; regional constitutional justice; rights; separation of powers

## **1 Introduction**

Russia claims to be a rule of law state (Article 1, 1993 Constitution of the Russian Federation;

hereinafter, Constitution RF)<sup>1</sup> and under Article 10 that the “agencies of legislative, executive, and judicial power shall be autonomous.”<sup>2</sup> Both principles of rule of law and separation of powers should operate not only at national level with the federal agencies of State power, but also within the subjects of the Russian Federation.

According to Constitution RF Article 65, as amended in 2014<sup>3</sup>, Russia currently regards herself as having 85 federation subjects. These are of different types: republics<sup>4</sup>, territories<sup>5</sup>, regions<sup>6</sup>, cities of federal significance<sup>7</sup>, an autonomous region<sup>8</sup>, and (within other federation

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<sup>1</sup> “The Russian Federation – Russia is a democratic federated rule of law state [*pravovoe gosudarstvo*] with a republic form of government.” in translation: William E. Butler, *Russian Public Law* (Wildy, Simmons & Hill Publishers, London, 2013, third revised edition), 4; updated version William E. Butler, “Translation of The Constitution of the Russian Federation,” 1 *The Uppsala Yearbook of Eurasian Studies* (2014), 309-52. In Peter Maggs, Olga Schwartz and William Burnham, *Law and Legal System of the Russian Federation* (Juris Publishing Inc., Huntingdon, New York, 2015, sixth edition) at 875 the Russian word *federativnoe* is translated as federal.) See also, for example, Dmitrii Nikolaevich Mironov, “*Osnovy formirovaniia pravovogo* [Fundamentals for the Formation of a Law-based State],” 3(6) *Konstitutsionnoe i Munitsipal’noe Pravo* (2016), 6-10.

<sup>2</sup> Butler, *op.cit.* note 1, 4.

<sup>3</sup> See Jane Henderson, “The 2014 amendments to the 1993 Constitution of the Russian Federation,” 1 *The Uppsala Yearbook of Eurasian Studies* (2014), 279-82, and Anna Jonsson Cornell, “Russia’s Annexation of Crimea – A Violation of Russian Constitutional Law?” 1 *The Uppsala Yearbook of Eurasian Studies* (2014), 263-8.

<sup>4</sup> 22 republics: Adygeia, Altai, Bashkortostan, Buriatiia, Dagestan, Ingushetiia, Kabardino-Balkariia, Kalmykiia, Karachaevo-Cherkesskaia, Kareliia, Komi, Crimea, Marii El, Mordoviia, Sakha (Iakutiia), Northern Osetia-Alaniia, Tatarstan, Tyva, Udmurt, Khakasiia, Chechnia, Chuvashiia.

<sup>5</sup> 9 territories (*kraia*): Altai, Zabaikal, Kamchat, Krasnodar, Krasnoiar, Perm, Maritime (Primorskii), Stavropol, Khabarov

<sup>6</sup> 46 regions (*oblastei*): Amur, Arkhangel, Astrakhan, Belgorod, Briansk, Vladimir, Volgograd, Vologda, Voronezh, Ivanovo, Irkutsk, Kaliningrad, Kaluga, Kemerovo, Kirov, Kostroma, Kurgan, Kursk, Leningrad, Lipetsk, Magadan, Moscow, Murmansk, Nizhegorod, Novgorod, Novosibirsk, Omsk, Orenburg, Orlovsk, Penza, Pskov, Rostov, Riazan, Samara, Saratov, Sakhalin, Sverdlovsk, Smolensk Region, Tambov, Tver, Tomsk, Tula, Tiumen, Ul’ianovsk, Cheliabinsk, Iaroslavl.

<sup>7</sup> 3 cities of federal significance: Moscow, St. Petersburg, Sevastopol.

<sup>8</sup> 1 autonomous region (*avtonomnaia oblast*): The Jewish Autonomous Region.

subjects) a few autonomous national areas.<sup>9</sup> Each has its own constitutive document.<sup>10</sup> For republics, this is a constitution; for the other federation subjects, it is called a charter (*ustav*).<sup>11</sup> Each federation subject has its own executive and legislation. There is indeed a federal law setting out the ‘general principles’ which must apply to their organization;<sup>12</sup> its provisions have been subject to scrutiny on a number of occasions by the Constitutional Court of the Russian Federation (CCRF).<sup>13</sup>

However, the situation with respect to courts and the judiciary is more complex. Under Constitution RF Article 71, which delineates jurisdiction between the federation and its subjects, organization is a federal matter and there is “Unity of the Judicial System”,<sup>14</sup> as well as autonomy of courts and independence of judges.<sup>15</sup> Under Article 3 the FCL on the Judicial System each federation subject houses federal courts, but may also have non-federal courts in the form of justice of the peace courts and a constitutional (or charter) court.<sup>16</sup> In the following

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<sup>9</sup> 4 autonomous national areas (*avtonomnye okruga*): Nenetskii, Khanty-Mansiiskii-Iurga, Chukotskii, Iamalo-Nenetskii.

<sup>10</sup> See Constitution RF Art.5.

<sup>11</sup> The only difference is that Republics may each adopt their constitution in whatever way they like; in other federal subjects the legislative agency adopts the charter. For further discussion of this difference see Jane Henderson and Marina Belykh, “The Protection of Rights in Russia’s Regions – the Role of the Constitutional and Charter Courts,” 2 *Russian Law, Theory and Practice* (2016), 4-12, 7.

<sup>12</sup> Federal law of 6 October 1999 no 184-FZ “*Ob obshchikh printsipakh organizatsii zakonodatel’nykh (prednodatel’nykh) i ispolnitel’nykh organiv gosudarstvennoi vlasti sub’ektov Rossiiskoi Federatsii*”. English translation as “Federal law on general principles of organization of legislative (or representative) and executive agencies of State power of subjects of the Russian Federation” updated to 2 April 2013 in Butler, *op.cit.* note 1, 714-74.

<sup>13</sup> E.g. Judgment of the CCRF of 24 December 2012 N 32-P; Judgment of the CCRF of 14 May 2013 N 9-P; Ruling of the CCRF of 6 November 2014 N 2427-O.

<sup>14</sup> The heading to Art.3; *ibid.*

<sup>15</sup> Constitution RF Art.120(1) Butler, *op.cit.* note 1, 27; FCL on the Judicial System Art.5, Butler, *op.cit.* note 1, 386.

<sup>16</sup> On the justice of the peace courts see e.g. Jane Henderson, “Justices of the Peace in Russia,” 5(3) *European Public Law* (1999), 373-80; Kathryn Hendley, “The Unsung Heroes of the Russian Judicial System: The Justice-of-the-Peace Courts,” 5(3) *Journal of Eurasian Law* (2013), 337-66, available at <[https://media.law.wisc.edu/m/dkxnt/jeurlaw\\_v5\\_n3\\_hendley.pdf](https://media.law.wisc.edu/m/dkxnt/jeurlaw_v5_n3_hendley.pdf)>.

sections we consider these regional constitutional (or charter) courts, and recent controversies concerning them.

## 2 Overview of Regional Constitutional Justice

As noted, each of the Russian Federation subjects has its own constitution or charter.<sup>17</sup> The Constitution RF requires that it must be consistent with its own provisions<sup>18</sup> but otherwise federation subjects are free to adopt whatever content they feel is appropriate.

Despite differences in format and length, all the constitutions and charters give support to the “rights of man and citizen”. At least 66 of the 85 make direct reference to the rights set out in the Constitution RF; some also list specific substantive rights, occasionally adding detail not in the Constitution RF.<sup>19</sup> As a result, all inhabitants in Russia have at least two pieces of legislation which guarantee them rights<sup>20</sup>: the Constitution RF, and the constitution or charter of the federation subject where they live. However, the extent to which these rights are enforced through judicial constitutional control is a problematic issue.

In respect to the Constitution RF, there is a well-known, and in general well-respected, federal Constitutional Court which oversees compliance.<sup>21</sup> Originally established in 1991 as the

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<sup>17</sup> Almost all are available at <<http://constitution.garant.ru/region/>>.

<sup>18</sup> See Constitution RF Arts.15(1) and 76(4), (5) and (6). Whilst in the 1990s in practice this provision was sometimes ignored, after Vladimir Putin assumed the presidency in 2000, there was a policy initiative to rein in nonconformity to federal legislation as part of a stabilizing ‘vertical of power’.

<sup>19</sup> In particular, the charters of the four Autonomous National Areas also guarantee the rights of their ‘small peoples’, as does the constitution of Yakutiia. See Henderson and Belykh, *op.cit.* note 11, 8.

<sup>20</sup> Note that the Constitution RF does give some rights to citizens and some to ‘all’ or ‘each’: see Ger van den Berg, “Human Rights in the Legislation and the Draft Constitution of the Russian Federation,” 18(3) *Review of Central and East European Law* (1992) 197-251, 235. “The regulation and defense of the rights and freedoms of man and citizen” is listed in Constitution RF Art.71 (paragraph c) as being within the competence of the federal authorities, but Art.72 (paragraph b) gives joint jurisdiction of the federation and federation subjects for “defense of the rights and freedoms of man and citizen”.

<sup>21</sup> There is a wide academic literature on the Russian Constitutional Court. Works in English include: Jane Henderson, “The Russian Constitutional Court and the Communist Party case: Watershed or whitewash?” 40 *Communist and Post-Communist Studies* (2007), 1-16; Jane Henderson, “The Constitutional Court of the Russian Federation: the Establishment and Evolution of Constitutional Supervision in Russia,” 3(2) *Journal of Comparative*

RSFSR Constitutional Court (overseeing the 1978 RSFSR Constitution, as amended), from its early years it quickly became an important feature in Russia's legal and political landscape, as during the Yel'tsin years all sides were happy to use it as a potential tool against political adversaries.<sup>22</sup> Following the adoption of the 1993 Constitution RF it was re-established as the Constitutional Court of the Russian Federation (CCRF) by the 1994 FCL on the Constitutional Court.<sup>23</sup> Its long-time and somewhat outspoken Chairman Valerii Zor'kin has ensured that the CCRF's profile has stayed prominent in the media,<sup>24</sup> and its thoughtful and generally independent judges have given rise to an impressive body of federal constitutional case law.<sup>25</sup>

The situation is quite different in relation to the enforcement of a federation subject's constitution or charter. There is nothing about this in the Constitution RF. However, under Article 27 of the 1996 FCL on the Judicial System, the legislature of a federation subject may establish its own constitutional or charter court to oversee observance of its foundational law.<sup>26</sup> The FCL sets out the court's role to be:

to consider questions of the conformity of laws of the subject of the Russian Federation, normative legal acts of agencies of State power of the subject of the Russian Federation and agencies of local self-government of the subject of the Russian Federation to the constitution (or charter) of the subject of the Russian Federation, and also in order to

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*Law* (2008), 138-157; Alexei Trochev, *Judging Russia: The Role of the Constitutional Court in Russian Politics 1990-2006* (Cambridge University Press, Cambridge, 2008); Carla L. Thorson, *Politics, Judicial Review, and the Russian Constitutional Court* (Palgrave Macmillan, Basingstoke, 2012).

<sup>22</sup> See e.g. Jane Henderson, "Making a Drama out of a Crisis: The Russian Constitutional Court and the Case of the Communist Party of the Soviet Union," 19(3) *King's Law Journal* (2008), 489-506.

<sup>23</sup> English translation as amended to 25 December 2012 in Butler, *op.cit.* note 1, 527-61.

<sup>24</sup> Zor'kin has been CCRF Chair from 1 November 1991 to 5 October 1993, then again from 23 February 2003 to date, following repeated reconfirmations.

<sup>25</sup> The CCRF publishes its decisions online at <<http://www.ksrf.ru/ru/Decision/Pages/default.aspx>> although not all rulings are included; see William B. Simons, "Russia's Constitutional Court and a Decade of Hard Cases: a Postscript," 28(3/4) *Review of Central and East European Law* (2002-3), 655-78.

<sup>26</sup> FCL of 31 December 2016 No.1-FKZ; English translation as amended to 2013 in Butler *op.cit.* note 1, 385-94.

interpret the constitution (or charter) of the subject of the Russian Federation.<sup>27</sup>

A CCRF Ruling (*opredelenie*)<sup>28</sup> of 6 March 2003<sup>29</sup> supported the principle that the regional legislation establishing such a court may assign it other roles, so long as these are appropriate for such a judicial agency, and that the subject matter is within the federation subject's jurisdiction as set out in Constitution RF Article 73. One example of such an additional role is oversight of the process for declaring the regional governor incapacitated through ill-health.<sup>30</sup>

A regional constitutional or charter court would clearly have an important role in overseeing the exercise of power by the federation subject's government (executive) and legislature. Both of these would be constrained through judicial oversight to act within the powers granted to them by the relevant constitution or charter. The regional court would thus uphold separation of powers as an important aspect of rule of law.

Jurisdiction of regional constitutional and charter courts, while different to some extent from court to court, is comparatively limited. There are gateway provisions for each court

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<sup>27</sup> *Ibid.*, 391.

<sup>28</sup> In this paper we have decided to adopt the translation convention for decisions (*resheniia*) of the CCRF that *postanovlenie* is a judgment; *zakliuchenie* is a conclusion and *opredelenie* as a ruling. This is the same as the translations used on the CCRF website except for *zakliuchenie* which is rendered as 'declaratory judgment' (compare the Russian text of Art.71 at <<http://www.ksrf.ru/ru/Info/LegalBases/FCL/Pages/Chapter2.aspx>> with the Court's English translation at <<http://www.ksrf.ru/en/Info/LegalBases/FCL/Pages/Chapter2.aspx>>. It also differs from the translations of terminology in the special issues on Russian's Constitutional Court, in 27(2/3) *Review of Central and East European Law* (2001) and 28(3/4) *Review of Central and East European Law* (2002-3) where Ger van den Berg uses the rather literal translation of decree for *postanovlenie* and calls *opredelenie* determinations. The authors are grateful for advice from Mikhail Antonov on this matter, although of course we take full responsibility for our choice.

<sup>29</sup> Ruling of the Constitutional Court RF "*O proverke konstitutsionnosti chasti 1 stat'i 27 Federal'nogo Konstitutsionnogo Zakona 'O sudebnoi sisteme Rossiiskoi Federatsii'*," No.103-O, 6 March 2003, SZRF (2003) No.17 item 1658. See discussion in Marina Lomovtseva and Jane Henderson, "Constitutional Justice in Russia," 34 *Review of Central and East European Law* (2009), 37-69, 49-50.

<sup>30</sup> See Jane Henderson, "Regional Constitutional Justice in the Russian Federation" 14(1) *European Public Law* (2008), 21-33, 29 (in Adygeia). Other differences in the assigned powers of the various courts are noted.

defining the range of those who may bring cases to court.<sup>31</sup> In many courts we see not only the possibility (although not obligation) of cases being referred from a domestic court if an issue of constitutionality arises (as is the situation with the CCRF) but also the possibility in several of the courts that individuals can petition directly for abstract judicial review (as used to be allowed by the CC RSFSR).<sup>32</sup> One example is in the Sverdlovsk Regional Charter Court, where an application can be made whether or not there is a concrete case in a court of general jurisdiction.

We now arrive at the most problematic aspect for these courts. Unfortunately, the wording of the 1996 FCL on the Judicial System makes it clear that federation subjects are not under any duty to create a constitutional or charter court. The legislation says they may—*mozhet*—if they wish, but they have no obligation to do so. This raises enormous problems of substantive unfairness. As things stand, only 16 out of the 85 federation subjects have an operative court, so that inhabitants in 69 regions lack the opportunity to defend their constitutional or charter rights in a court. This lack of appropriate courts, breaching the principle of equal treatment, has drawn adverse comment for a number of years, including by the current authors.<sup>33</sup>

Before we turn to the courts and their problems, however, we must flag up the curious contrast with the regional plenipotentiaries for human rights.

### **3 The Contrast with Regional Ombudsmen (and women)**

As noted, only a small minority of the Russian Federation subjects have effective working courts exercising constitutional control. This stands in very stark contrast to the regional plenipotentiaries for human rights, also known as human rights ombudsmen (or ombudswomen; of the 85 listed, 51 are male and 34 female, so an exact 60%:40% ratio). Every single federation

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<sup>31</sup> *Ibid.*, 29, where it was noted that at that time only in Northern Ossetia-Alania could citizens directly bring cases to court.

<sup>32</sup> The issue of citizens' access to constitutional justice is discussed in an article by the chairman of the Republic Ingushetia constitutional court: Aiup Karimsultanovich Gagiev, "*Dostupnost' konstitutsionnogo pravosudiia dlia grazhdan* [Access to Constitutional Justice for individuals]," 3 *Zhurnal konstitutsionnogo pravosudiia* (2015), 28-30.

<sup>33</sup> See e.g. Henderson and Belykh, *op.cit.* note 11, 11-12.



subject has its own plenipotentiary.<sup>34</sup>

Central legislation dealing with the office of regional ombudsman has also developed rather more quickly than that relating to regional constitutional or charter courts. For both, the starting point is a Federal Constitutional Law allowing the possibility. For the courts, as noted earlier, this is the 1996 FCL On the Judicial System which said a federation subject may set up such a court. Similarly, Article 5 of 1997 FCL on the Plenipotentiary for Human Rights in the Russian Federation has the equivalent permissive wording for establishing a regional ombudsman:

- (1) In accordance with the constitution (or charter) or law of a subject of the Russian Federation the post of Plenipotentiary for Human Rights in the subject of the Russian Federation *may* be instituted. [Emphasis added]
- (2) The financing of the activity of the Plenipotentiary for Human Rights in a subject of the Russian Federation and the apparatus thereof shall be effectuated from assets of the budget of the subject of the Russian Federation.<sup>35</sup>

It is also within federation subjects' residual rights, set out in Constitution RF Article 73, to legislate on any matter not relegated by Article 71 to the central authorities, nor specified in Article 72 as being within joint jurisdiction of the Russian Federation and federation subjects. Establishing a regional ombudsman clearly fits those criteria.

However, federal law on the ombudsmen has progressed further. On 17 April 2015 a federal law came into force which for the first time specified the procedure for the appointment of regional ombudsmen as well as the requirements for candidates to the post, aspects of their

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<sup>34</sup> See names and addresses at <<http://ombudsmanrf.org/russia/ombudsmans>>. In a paper delivered at the International Society of Public Law (ICON) Conference 17-19 June 2016, Henderson noted at that time that there were "only 3 subjects of the Federation without an ombudsman – Republic Tyva, city of federal significance Sevastopol, and Chukotsk Autonomous National Area (despite specific mention in the Tyva Constitution and Chukotsk charter.)" Clearly appropriate action has been taken in the intervening time to remedy this situation.

<sup>35</sup> Butler, *op.cit.* note 1, 102.

role, and rights and duties.<sup>36</sup> Detailed rules, including the procedure for citizens to raise complaints to them, and the measures they may take in response, are left to regional legislation. But the federal consolidation of their main powers through this 2015 law strengthened the ombudsman's position in dealing with regional state agencies.

A press report in July 2017 raised the possibility of further federal legislation expanding the rights of regional ombudsmen.<sup>37</sup> The Coordination Council of Ombudsmen submitted to the Federation Council a Concept for a draft law "On the General Principles of the Organization and Activity of Human Rights Ombudsman in the Subjects of the Russian Federation" but despite support from the current federal ombudsman, Tatiana Moskalkova, at the present time no draft has yet been submitted to the Duma.

It is beyond the scope of this article to examine closely how ombudsmen fit within the constellation of methods and agencies for protecting rights in Russia, and to give any overall assessment of their effectiveness.<sup>38</sup> Certainly there are strong examples of effective regional ombudsmen, for example the long-serving Sverdlovsk region ombudswoman, Tatiana Georgievna Merzliakova, who is a well-known public figure.<sup>39</sup>

The apparent enthusiasm at federal level<sup>40</sup> for regional ombudsmen strongly counterpoints the comparative lack of federal activity to support regional constitutional or charter courts. It is possible one factor might be financial; the regional budgets must cover both the cost of the

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<sup>36</sup> Federal law of 6 April 2015 No.76-FZ "*O vnesenii izmenenii v otdel'nye zakonodatel'nye akty Rossiiskoi Federatsii v tseliakh sovershenstvovaniia deiatel'nosti upolnomochennykh po pravam cheloveka*" available at <<http://www.garant.ru/hotlaw/federal/617608/>>.

<sup>37</sup> Irina Nagornyykh, "Regional'nyy ombudsmenam rasshirit prava," *Kommersant* (no 134 of 26 July 2017), 3 available at <<https://www.kommersant.ru/doc/3366992>>.

<sup>38</sup> Articles in English on the Russian ombudsman include Emma Gilligan, "The Human Rights Ombudsman in Russia: The Evolution of Horizontal Accountability," 32(3) *Human Rights Quarterly* (2010), 575-600; Sinikukka Saari, "Norm of a Human Rights Ombudsman" in her *Promoting Democracy and Human Rights* (Routledge, London, New York, 2010), 32-51.

<sup>39</sup> Her annual reports are available at <<http://ombudsman.midural.ru/article/show/id/1012>> and special reports at <<http://ombudsman.midural.ru/article/show/id/1014>>.

<sup>40</sup> See for example President Vladimir Putin's speech to regional ombudsmen, 16 August 2012, "*Vstupitel'noe slovo na vstreche s upolnomochennymi po pravom cheloveka v sub'ektakh Rossiiskoi Federatsii 16 avgusta 2012*", available at <[https://vk.com/video-23977193\\_163185694](https://vk.com/video-23977193_163185694)>.

regional ombudsmen and their office, and also, if established, the regional constitutional or charter court. We do not have the data to say whether one or the other is in general cheaper to support. In any event, the authors of this article feel that both regional ombudsman and regional constitutional or charter courts, with their different purposes and methods of protection, should be equally available in all regions.

Another factor for the apparently widespread acceptance of regional ombudsmen may be their comparatively limited power; results are achieved not by direct means but through enquiry and strategic use of adverse publicity. The ombudsman does not have independent executive powers to change an administrative decision. Also, in contrast to a finding by a regional constitutional or charter court, actions as a result of ombudsman activity would not have any precedential value; there is no equivalent of a court ruling on, for example, separation of powers issues which could have significance beyond the individual circumstance. Therefore a regional government and legislature may feel more comfortable dealing with an ombudsman, rather than being judged by a constitutional or charter court.

In early November 2017 the UK NGO (non-governmental organization) “Rights in Russia” flagged up one other possible motive for the apparent support of regional ombudsmen.<sup>41</sup> It cited a critical article by Igor Averkiev, executive director of the Perm Civic Chamber, posted on the Moscow Helsinki Group site.<sup>42</sup> In it Averkiev suggested that careful selection of personnel could ensure that the most crucial issues of individual rights—and particularly political rights—would not be dealt with by a regional ombudsman in any way which might cause a conflict with the regional government, and particularly its head, the regional governor. This view may be overly cynical. The 2015 federal law specifies that a regional ombudsman will be put into, and relieved from, office by the regional legislature (article 16.1, paragraph 4) with a broad right of candidate nomination (paragraph 12), including by:

the highest official of the subject of the Russian Federation (the regional president or

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<sup>41</sup> Igor Averkiev, “On the office of human rights ombudsperson and human rights in Perm Region,” available at <<http://www.rightsinrussia.info/advisory-council/advisory-committee/averkiev>>.

<sup>42</sup> It originally appeared in October 2017 in the online journal 7x7; see <<https://mhg.ru/o-maksime-reshetnikove-pavle-mikove-i-pravah-cheloveka-v-permskom-krae>>.

governor, republic head or the head of the regional government), deputies (group of deputies, or factions) of the regional legislative (representative) assemblies, local government bodies, human rights organizations, and other bodies and organizations.<sup>43</sup>

Thus, the governor does not officially have the power to hire and fire, nor exclusive control over nominating personnel. However, in practice it well may be that a regional governor or government would have ways and means to influence who is a candidate, to ensure that the ombudsman is someone with whom they can have ‘helpful’ relations. As is often the case in Russia, personnel are key, and it may be that negotiations ‘between officials’ are more kindly regarded by regional executives and legislatures than the risk of adverse judgment by a constitutional or charter court.

#### **4 The Establishment (or Lack) of Regional Constitutional and Charter Courts**

We now return to the courts, such as exist.<sup>44</sup> A survey of the current courts shows that the majority of republics have established a constitutional court (14 out of 22; just over 60%).<sup>45</sup> However, in respect to the other federation subjects, the situation is much bleaker. At the present

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<sup>43</sup> Available at <<http://www.garant.ru/hotlaw/federal/617608/#ixzz51nWwL89z>>.

<sup>44</sup> For more about the history of regional constitutional (charter) courts existence and law, drafts of law see for example: Svetlana Eduardovna Nesmeianova, *Konstitutsionnyi sudebnyi protsess v Rossii: Uchebnoe posobie* (RIOR: Infra-M, Moscow, 2012), 157-162; Mikhail Alekseevich Mitiukov, Sergei Vladimirovich Kabyshev; V.K Bobova, and S.E. Zaslavskii (eds.), *Problemy Obrazovaniia i Deiatel'nosti Konstitutsionnykh (Ustavnykh) Sudov Sub"ektov Rossiiskoi Federatsii: Materialy Vserossiiskogo Soveshchaniia* (Moscow, 24 December 1999) (Formula prava, Moscow, 2000); Zh.I. Ovsepian, *Stanovlenie konstitutsionnykh i udysvykh sudov v Sub"ektakh Rossiiskoi Federatsii (1999-2000)* (IKTS MarT, Moscow, 2001).

<sup>45</sup> Adygeya; Bashkortostan; Buriatiia; Dagestan ; Ingushetiia; Kabardino-Balkariia; Kareliia; Komi; Marii El; Sakha (Iakutia); Northern Osetia-Alaniia; Tatarstan; Tyva; and Chechniia. In an article by Elena Buerachnaia in the *Baikal Daily* (26 February 2016) available at <<https://www.baikal-daily.ru/news/19/196012/>> Deputy Sergei Mezenin noted that “today the Constitutional Courts operate in 14 republics, another five do not, two ‘are registered, but in fact there are none.’ In Karelia, the court did not hold a single meeting for a year.” (authors’ translation.)

time (early 2018) only two regions (Kaliningrad and Sverdlovsk) and one city of federal significance (St. Petersburg) actually have working courts. In her 2012 publication, Belianskaia noted, “After 2003, when the charter court of the Kaliningrad Region was established, no courts of this kind were created in the regions.”<sup>46</sup> (In fact, in the year her paper was published the short-lived Cheliabinsk regional charter court was established; see more in on this below in section 6, Courts under Threat.) The effect, according to Belianskaia, was that “... only about 20.5% of subjects have constitutional (charter) courts.”<sup>47</sup>

In some federation subjects legislation to establish a court was passed but not put into action. So, for example, “the City of Moscow Charter has had provisions since its adoption in 1995 for a charter court (article 50, with article 51 on the judiciary) but none has been created.”<sup>48</sup> In 1997 legislation for a charter court was adopted in the then Khanti-Mansi autonomous area but no court created.<sup>49</sup> A similar situation pertains in Tiumen, with a law in 1998, and Krasnoiarsk, likewise in 1999.<sup>50</sup> The Belgorod Region Charter was amended in 2003 to allow for the creation of a charter court (as well as justice of the peace courts)<sup>51</sup>, but no charter court has been established there. More recently, in Irkutsk region, the charter Court should have started

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<sup>46</sup> Olga Viktorovna Belianskaia, “*K Voprosu o Neobkhodimosti Sozdaniia Ustavnogo Suda Tambovskoi Oblasti* [On the issue of the need to establish a charter court of the Tambov region],” 12 (116) *Vestnik Tambovskogo Universiteta* (2012), 481-6.

<sup>47</sup> *Ibid.*, 482.

<sup>48</sup> Noted in (no author given) “Review,” of Viktor N. Demidov, *Konstitutsionnoe (Ustavnoe) Pravosudie Sub’ektov Rossiiskoi Federatsii v Mekhanizme Zashchity Prav i Svobod Cheloveka i Grazhdanina* [Constitutional (Charter) Justice of the Subjects of the Russian Federation as a Mechanism for the Protection of Human Rights and Freedoms (authors’ translation.)], (Kazan University, Kazan, 2014) in 3 *Gosudarstvo i Pravo* (2015), 124-5 available at <<http://naukarus.com/b-n-demidov-konstitutsionnoe-ustavnoe-pravosudie-subektov-rossiyskoy-federatsii-v-mekhanizme-zashchity-prav-i-svobod-chelov>>.

<sup>49</sup> Marina L’vovna Belykh, “*Regional’naia konstitutsionnaia iustitsiia v Rossiiskoi Federatsii*,” in *Aktual’nye Problemy Teorii i Praktiki Konstitutsionnogo Sudoproizvodstva (vypusk VIII)* (Kazan University, Kazan, 2013), 131-7, 132.

<sup>50</sup> See Henderson *op.cit.* note 30, 32, and also Alexei Trochev, “Less Democracy, More Courts: A Puzzle of Judicial Review in Russia,” 38(3) *Law & Society Review* (2004), 513-48, 533.

<sup>51</sup> See <[http://constitution.garant.ru/region/ustav\\_belgorod/chapter/5/#block\\_500](http://constitution.garant.ru/region/ustav_belgorod/chapter/5/#block_500)> and <<http://base.garant.ru/26304800/5/#friends>>.

work on 1 January 2015 on the basis of a law passed the previous year, but by mid 2016 was still not functioning as the new governor had refused to nominate judges.<sup>52</sup> This is examined further below in section 6, Courts under Threat.

This very patchy provision of constitutional/charter courts clearly raises severe issues of equality of opportunity to defend rights and freedoms, which article 19 of Constitution RF requires, not to mention undercutting federal Constitution Article 46(1) which guarantees to each judicial defence of their rights and freedoms.<sup>53</sup>

This issue of why there has been reluctance to set up courts was explored in some depth by political scientist Alexei Trochev in his 2004 article “Less Democracy, More Courts: a Puzzle of Judicial Review in Russia”.<sup>54</sup> Trochev reported, “Of the [then] eighty-nine regions, fifty-six established courts in their constitutions/charters, twenty passed court statutes, and seventeen of those created courts in reality, two of which failed.” As he summarises in the paper’s abstract, his analysis found:

that constitutional courts emerged only in those regions where governors virtually guaranteed their re-election by consolidating their political power vis-a-vis federal and local governments. .... The changes in the balance of power between those governors, who aspired to have their own judicial system, and the federal government that insisted on a single federal judicial system, determined the variation in the process of court-building

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<sup>52</sup> See Zoa Khamiduppina, “*Ustavnyi sud poshel po instanstiiam* [Charter court went on appeal],” *Irsiti!ru* (21 January 2016) available at <<https://ircity.ru/articles/10210/#>>; (no author given), “*Na Sergeia Levchenko podan isk za zatiagvanie protsessa sozdaniia Ustavnogo suda*,” *Irkutsk onlain* (14 January 2016) available at <<http://www.irk.ru/news/20160114/claim/>>.

<sup>53</sup> See for further discussion Henderson, *op.cit.* note 30, 31. The CCRF has shown concern to protect human rights in regions where there is no court; see Olga Andreevna Kovyun and Nataliia Dmitrievna Tereshchenko, “*Konstitutsionnyi Sud RF v Mekhanizme obespecheniia konstitutsionnosti zakonodatel'stva Krasnodarskogo Kraia v Oblasti Prav i Svobod Cheloveka*,” 3 *Konstitutsionnoe i Munitsipal'noe Pravo* (2016), 42-5; Mikhail Ivanovich Kleandrov [CCRF Judge], “*V Zashchitu Konstitutsionnykh (Ustavnykh) Sudov Sub"ektov RF*,” 6 *Rossiiskaia Iustitsiia* (2015), 2-7.

<sup>54</sup> Trochev, *op.cit.* note 50.

across Russian regions.<sup>55</sup>

Trochev suggested that “only very powerful governors could resist federal attempts to concentrate power at the federal level, including the judicial system. These governors amassed sufficient power to both control federal courts located in their regions and afford their own constitutional court.”<sup>56</sup> Trochev postulates three waves of regional court building in the 1990s in line with political developments, with the final wave following the adoption of the 1996 FCL on the Judicial System.<sup>57</sup> Nevertheless, as Trochev pointed out, whilst some regions incorporated the wording from the 1996 FCL into their charters, few established working courts. Trochev explains this:

As the idea of championing autonomy from the federal government became less accepted in Moscow, regional political elites did not need such attributes of independent statehood as regional courts. These elites witnessed the shift in the role of these courts—from the guardians of constitutions/charters protecting against federal encroachment to the arms of federal government ensuring the compliance of regional laws with federal laws.<sup>58</sup>

Thus, regional lawmakers were aware of the impact courts might have in overseeing and monitoring their activities.

But the thrust of Trochev’s study was to test from a political scientist’s perspective whether the ‘judicial empowerment thesis’ of court-building as ‘an elite driven process of the

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<sup>55</sup> *Ibid.*

<sup>56</sup> *Ibid.*, 518-9.

<sup>57</sup> The first wave, April 1990-October 1993, consisted of Constitutional Supervision Committees established in 11 republics, with some republics then following the model of the 1991 RSFSR Constitutional Court. Trochev asserts (at 528) “the first wave ... arose entirely due to the initiative of the political and legal elites in the republics and involved both judicial and quasi-judicial bodies of constitutional review.” He sees a reverse wave June 1993-February 1994, when some courts were dissolved, for example in June 1993 in Chechnya under Dudaev. The second wave was April 1994-January 1997 during which 6 republics adopted laws or amended their existing laws and charter courts were also created in other federation subjects. The third wave from January 1997 onwards.

<sup>58</sup> Trochev, *op.cit.* note 50, 533.

political power distribution’ pertained in Russia.<sup>59</sup> Our paper follows up on questions raised in Trochev’s conclusion, including, “Should we expect the rise of the rule of law...”<sup>60</sup> which would be dependent on “the actual impact of judicial review (judgments and their enforcement) on the political process, the capacity of the state, and on the well-being of ordinary citizens.”<sup>61</sup> In this article, we as lawyers explore the drama some courts have had in the struggle for separation of powers within regional governance. In other works we have described the activities of some of the more active courts, and noted, for example, their recognition, and use, of international human rights instruments.<sup>62</sup> Here we focus on the attacks on some courts in recent years, and the responses to them, to see what these arguments indicate about the development in Russia of respect for law and separation of powers.

Before we consider those disputes, however, we give a brief overview of the functioning republican and charter courts.

## 5 Effective Work - Effective Judges

Some constitutional and charter courts have been notably more active than others. Analysis by the current authors of court activity in 2015 showed some marked variation (see Table 1).

Table 1: Activity of republican constitutional courts and regional charter courts in 2015

Federation Subject where a Court had been established	Decrees ( <i>postanovlenii</i> ) i.e. judgments after contested hearings	Rulings ( <i>opredelenii</i> ) i.e. court declarations where no hearing was required
Republic of Adygeya	0	4
Republic of Bashkortostan,	2	10
Republic of Buriatiia,	Not functioning	
Republic of Daghestan,	1	1

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<sup>59</sup> *Ibid.*, 541.

<sup>60</sup> 542.

<sup>61</sup> 542.

<sup>62</sup> See e.g. Lomovtseva and Henderson, *op.cit.* note 29; Jane Henderson and Marina Belykh, “Constitutional Justice in the Subjects of Russia,” 1 *Russian Law, Theory and Practice* (2014), 6-15; Henderson and Belykh, *op.cit.* note 11;



Republic of Ingushetiia,	1	2
Kabardino-Balkarian Republic,	1	0
Republic of Karelia,	2	7
Komi Republic,	4	3
Republic of Marii El,	2	2
Republic of Sakha (Iakutia),	4	1
Republic of North Osetia-Alania,	3	5
Republic of Tatarstan,	20	15
Republic of Tuva,	0	0
Chechen Republic)	No information	
Kaliningrad oblast,	11	69 (some interlocutory)
Sverdlovsk oblast	5	1 to terminate proceedings
St. Petersburg	3	9
Irkutsk	Not functioning	
Chelabinsk	Not functioning	

The courts in Tatarstan and Kaliningrad, and to a slightly lesser extent Sverdlovsk, are well known to be consistently active. A close study by Dr Belykh of the type of cases with which they tend to deal evidences their important role in the protection of local inhabitants' rights.

Specifically, it is mainly social-economic rights which are supported; the rights which have a very immediate impact on citizens' actual everyday existence.<sup>63</sup> We must stress that it is the quality and effect rather than the quantity of decisions made by these courts that is important, as the application of cogent legal argument to strike down unconstitutional activities by the regional legislature and/or government would have deep political and social significance in the regional context.

That these courts take their legal role seriously is unsurprising given the overall high level of legal expertise of their judges. A snapshot taken in the summer of 2017 of judges listed on the relevant court websites as currently serving indicated that of the 62 judges for whom sufficiently detailed information was available, all had a law degree, and over half (26 out of 51) had a higher law degree (*kandidat* or *doktor iuridicheskikh nauk*). Beyond that, 23 out of 51 also had an academic role in teaching law, either previously, or on a part-time basis while serving as judge. 15 judges were specifically listed as having extensive legal publications. In assessing the

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<sup>63</sup> See e.g. Henderson and Belykh, (2014) *op.cit.* note 62, 15.

importance of this information, it is worth bearing in mind that, in line with Russia's heritage as a Romanist-style codified legal system (certainly in form, even though the closeness of the relationship to other systems within that family grouping might be arguable),<sup>64</sup> in Russia the cultural tradition is to give deep respect to legal academics, professors and academicians. The latter are the most esteemed of all legal professionals. The strong academic credentials of so many court judges is thus an extremely positive feature.

These data showing a significant overlap between legal academia and those administering regional constitutional justice can only be presented as a qualitative picture; there are no real comparators to allow deeper analysis.<sup>65</sup> Nevertheless, the richness of legal expertise brought by these exemplars to their judicial roles is impressive. In line with this, the knowledge about and use of international law in the more active courts (the three charter courts Sverdlovsk, St Petersburg and Kaliningrad, and the constitutional court in the Republic of Tatarstan) is also noteworthy.<sup>66</sup>

As noted, the positive role of the most active courts has a value which is impossible to assess in monetary terms.<sup>67</sup> A similar point was made in 2015 by Viktor Nikolaevich Demidov, the retired chairman of the Constitutional Court of the Republic of Tatarstan.<sup>68</sup> He also noted:

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<sup>64</sup> For a perceptive overview and analysis see William Partlett, "Re-Classifying Russian Law: Mechanisms, Outcomes, and Solutions for an Overly Politicized Field" 2(1) *Columbia Journal of East European Law* (2008), 1-55.

<sup>65</sup> Although survey data in Vadim Volkov and Aryna Dzmitryieva "Recruitment patterns, gender, and professional subcultures of the judiciary in Russia," 22(2) *International Journal of the Legal Profession* (2015), 166-192 at 172 show how infrequently domestic court judges have any similar academic background; in the 2011 survey, only 3.7 percent had previously worked in Higher education institutions; by 2013 this was reduced to 2.2 percent.

<sup>66</sup> See discussion in Henderson and Belykh, *op.cit.* note 11.

<sup>67</sup> Henderson and Belykh, *op.cit.* note 11, 10.

<sup>68</sup> Viktor Nikolaevich Demidov, "Zashchita Prav i Svobod Grazhdan Konstitutsionnymi (Ustavnymi) Sudami Sub"ektov Rossiiskoi Federatsii [Protection of the Rights and Freedoms of Citizens by the Constitutional (Charter) Courts of Subjects of the Russian Federation]," 7 *Gosudarstvo i Pravo* (2015), 17-26 available at <<http://naukarus.com/zaschita-prav-i-svobod-grazhdan-konstitutsionnymi-ustavnymi-sudami-subektov-rossiyskoy-federatsii>>. Note his other works e.g. Viktor Nikolaevich Demidov, "Konstitutsionnoe Pravosudie Sub"ektov Rossiiskoi Federatsii v Obshchegosudarstvennoi Sisteme Zashchity Prav i Svobod Cheloveka i Grazhdanina (Metodlogiia, Teoriia, Praktika) [Constitutional Justice in the Subjects of the Russian Federation in the National

It is a typical case that over two-thirds (about 75 per cent) of the final decisions of constitutional (charter) courts for the entire period of their existence (from 1992 to the present time) were made on complaints of citizens and their associations about violations of the constitutional rights and freedoms of man and citizen.<sup>69</sup>

He points out that this fits with the “general trend in constitutional justice in our country, since the share of final decisions in the form of a judgment (*postanovlenie*) on the protection of human and civil rights and freedoms in the practice of the CCRF over the past decade (2002-2013)) is also about 75 per cent.”<sup>70</sup>

As well as the inestimably important work of supporting practical rights, the significance of the courts’ work in relation to the issue of abuse of power was cogently expressed in 2014 by Aleksandr Vladimirovich Savos’kin, and Anton Olegovich Kazantsev:

During the relatively short period of its existence, regional constitutional justice has proved its social necessity and relevance. According to the official websites of constitutional (charter) courts, hundreds of regional laws and other normative acts have been found not to comply with the constitutions and charters of the constituent subjects of the Federation.<sup>71</sup>

We will see in the next section, Courts under Threat, that in two instances—one in a republic and one in a region—a court came under attack following a case where it ruled against one of the other branches of state power. In both situations, court protection of citizen’s rights brought it into conflict with the regional government, with unfortunate consequences.

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System for the Protection of the Rights and Freedoms of Man and Citizen (Methodology, Theory, Practice)],” [Thesis for a doctorate in law] (Russian State University of Justice, Moscow, 2016).

<sup>69</sup> Demidov 2015, *op.cit.* note 68, online version no page given.

<sup>70</sup> *Ibid.*

<sup>71</sup> Aleksandr Vladimirovich Savos’kin and Anton Olegovich Kazantsev, “*Vozmozhno Li Uprazhdenie Konstitutsionnogo (Ustavnogo) Suda Sub”ekta Rossiiskoi Federatsii?* [Is it possible to abolish the constitutional (charter) court of a Subject of the Russian Federation],” 6(43) *Aktual’nye Problemy Rossiiskogo Prava*, 1108-14.

## 6 Courts under Threat

Having noted earlier how few courts have been established, we now turn to the worrying development of courts being “retired”. In recent times there have been three instances of the cessation of an existing court, as well as three unsuccessful attempts to abolish the St. Petersburg charter Court; each time the bill was rejected by the majority of deputies.<sup>72</sup>

The first attack was on the Constitutional Court of the Republic of Buriatiia, and involved suspension, rather than complete abolition. The Buriatiia Constitutional Court had come into existence following legislation in 1994, with an establishment of three judges.<sup>73</sup> In early 2012 the court chairman Kapiton A. Budayev resigned.<sup>74</sup> This left the court inquorate. Article 5 of the establishing legislation said that any judicial vacancy should be filled within 3 months, but this did not happen. Further, the five-year term of office of the two remaining judges expired in 2013. Then the court’s funding was terminated by a budgetary law adopted on 14 November 2013 by the republic’s legislature, the People’s *Khural*.<sup>75</sup> The republican budget made no provision for the court’s costs, apart from pensions for retired judges.<sup>76</sup> With no budget, the court was suspended from the beginning of 2015.

Disquiet at this was registered at the federal level and consequently, a group of State Duma deputies appealed to the CCRF, claiming that the effect of the budgetary law deprived citizens of their right to appeal to the republican constitutional court and also that it breached the principle

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<sup>72</sup> *Ibid.* The dates of the attempts are not given.

<sup>73</sup> Law of the Republic Buriatiia, “On the Constitutional Court of the Republic Buriatiia” of 25 October 1994, no. 42-1.

<sup>74</sup> Savos’kin and Kazantsev, *op.cit.* note 71.

<sup>75</sup> The following summary draws on Henderson and Belykh, *op.cit.* note 11. See also Iulii Grigor’evich Khamnuev and Aldar Eduardovich Erdyneev, “*Kazus konstitutsionnogo suda respubliki Buriatiia: postanovka problemy c tolku zreniia konstitutsionnoi teorii*,” 3(74) *Sibirskii Iuridicheskii Vestnik* (2016), 49-53, available at <<https://cyberleninka.ru/article/v/kazus-konstitutsionnogo-cuda-respubliki-buryatiya-postanovka-problemy-s-tochki-zreniya-konstitutsionnoy-teorii>>.

<sup>76</sup> Law of the Republic Buriatiia, “On the Suspension of Operation and Loss of Force of Certain Legislative Acts of the Republic Buriatiia,” 14 November 2013, N 92-V.

of separation of powers. The CCRF issued a ruling on 3 March 2015 agreeing with them.<sup>77</sup> It noted that although the FCL on the Judicial System RF gave federation subjects an absolutely free choice as to whether or not to create an appropriate constitutional or charter court, once established, such a court could not be suspended merely through the provisions of a budgetary law. If abolition were desired, the federation subject legislature would need to adopt suitable legislation. A budgetary law should only contain provisions related to revenues and expenditure, and it was therefore not apposite that it should alter existing rights and obligations. In particular, a budgetary law could not be used to change the legal status and functioning of a constitutional or charter court. This would be an:

unacceptable interference with the legislative power in the function of the institutions of justice, violate the position on the separation of powers established by the Russian Constitution, autonomy of the agencies of judicial power, independence of judges and of court funding, which is necessary to ensure the independent administration of justice (Constitution articles 10, 120, and 124).<sup>78</sup>

This clear CCRF ruling that the suspension of the Republic Buriatia Constitutional Court was unconstitutional encouraged the People's *Khural* to adopt legislation in 2016 to reinstate the court.<sup>79</sup> (See section 7, The Fightback, particularly text below to notes 110-114.

The second attack, chronologically speaking, was in the Cheliabinsk region. A charter court began work there in 2012, following adoption of a law on the court on 27 October 2011. However in early 2014 the then new Acting Governor Boris Dubrovskii abolished it. His justification was that the judges in the court had arrived at a different conclusion to the CCRF in relation to the law of Cheliabinsk region of 28 November 2002 "On Transport Tax".

The issue before the court was the reduction of tax paid by certain groups of people,

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<sup>77</sup> N 421-O, "Po zaprosu gruppy deputatov Gosudarstvennoi Dumy o proverke konstitutsionnosti puncta 2 chasti 1 stat'i 1 Zakona Respubliki Buriatiia 'O priostanovlenii deistviia i priznanii utrativshimi silu otdel'nykh zakonodatel'nykh aktov Respubliki Butiatiia' v sviazi s priznatiem zakonom Respubliki Buriatiia 'O respublikanskom biudzhete na 2015 god i na planovyi period 2016 i 2017 godov'".

<sup>78</sup> *Ibid.*

<sup>79</sup> As reported by the Baikal-Daily, suspended 2014 until that date.

namely the elderly or families with three or more children under the age of 18. The Cheliabinsk charter court ruled on 12 February 2013 that the law unjustifiably restricted the right of these people to social support. In contrast, the CCRF concluded on 2 December 2013 that the regulation in the Cheliabinsk law of tax privileges did not contradict the Constitution RF. The acting governor suggested that this disparity of view indicated that the Cheliabinsk charter court judges had insufficient legal expertise. This of course ignored the fact that the Cheliabinsk law “On Transport Tax” was being considered in two completely different contexts, and in relation to two different constitutive laws, i.e. the Cheliabinsk charter and the Constitution RF. It is perfectly possible for there to be justifiably different decisions in such circumstances.

In their analysis of the legality of abolishing regional constitutional and charter courts Savos’kin and Kazantsev noted that the draft legislation to dissolve the Cheliabinsk charter court was introduced by the Acting Governor, Boris Dubrovskii, almost as soon as he took up the post, after the previous governor had prematurely relinquished office in mid January 2014.<sup>80</sup> Both the law amending the Cheliabinsk charter (to remove mention of the court), and the law purporting to abolish the court were adopted very swiftly (all three readings in one session), with no prior warning or discussion, and absolutely no consultation with the judges. The two pieces of draft legislation were only put onto the legislature’s agenda at the plenary meeting itself. “According to the chairman of the Cheliabinsk region Charter Court Evgenii Gennad’evich Ereemeev, ‘everything happened very quickly, unclearly and secretively’.”<sup>81</sup>

Savos’kin and Kazantsev also suggested that the regional legislature was happy to abolish the court because it did not like adverse criticism. They point out that:

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<sup>80</sup> Savos’kin and Kazantsev, *op.cit.* note 71 citing Decree of the President of the Russian Federation of 15 January 2014 N 21 “*O dostrochnom prekrashchenii polnomochii Gubernatora Cheliabinskoi oblasti* [On the early termination of the powers of the Governor of the Chelyabinsk Region]” available on the database at <<http://www.pravo.gov.ru>>.

<sup>81</sup> Interview with the Chairman of the Charter Court of the Cheliabinsk Region Evgenii G. Ereemeev, “*Evgenii Ereemeev: ‘Vse proizochlo ochen’ bistro, neponiatno i skrytno* [Everything happened very quickly, unclearly and secretively],” cited in note 10 of Savos’kin and Kazantsev, *op.cit.* note 69, 1109 and available in the online edition of znak.com at <<http://znak.com/chel/articles/03-02-16-30/101860.html>>.

It is significant that about half of all cases reviewed by the Cheliabinsk Region's Charter Court concerned regional laws. Even more revealing is the fact that the first (in the order of adoption) of the judgments of the Cheliabinsk Region Charter Court<sup>82</sup> was immediately extremely negatively received by the legislator.”<sup>83</sup>

In it, the Charter Court decided that some provisions of the Cheliabinsk law “On Transport Tax”<sup>84</sup> did not comply with the Cheliabinsk Regional Charter. The court decision was clearly significant for the particular citizens whose rights were upheld, but this was a fairly small group (pensioners with vehicles with an engine capacity of over 150 horsepower) so there would be little adverse impact on the region's transport tax revenues.

Despite this, the Legislative Assembly of Cheliabinsk Region has strongly opposed the judgment of the Charter Court, considering it as an intervention in the discretion of a legislator of a subject of the Russian Federation... One gets the impression that for the Cheliabinsk Region Legislative Assembly the very idea that someone has the right to correct the result of its activities—regional laws—was unacceptable.<sup>85</sup>

The third instance of a court adversely impacted by behaviour from one of the other branches of power was in Irkutsk region. Here the problem was deliberate inactivity. A law was adopted in May 2014 to establish an Irkutsk charter court, to begin work on 1 January 2015. A competition was established to find suitable judicial candidates, and four names were put forward by the then

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<sup>82</sup> Note 11 of Savos'kin and Kazantsev, *op.cit.* note 71, 1110: Decree of the Charter Court of the Cheliabinsk Region of 12 February 2013 N 001/13-P, “*Po delu oootvetsvii Ustavu (Osnovnomy Zakonu) Cheliabinskoi oblasti otdel'nykh polozhennii stat'I 2, punktov 2 i 3 stat'I 4 Zakona Cheliabinskoi oblasti ot 28 noiabria 2002 goda No.114-ZO 'O transportnom naloge' v sviazi c zhaloboi grazhdanki Andreevoi N.P.*” 26 *Iuzhnoural'skaiia Panorama* (2013) no page given.

<sup>83</sup> Savos'kin and Kazantsev, *op.cit.* note 69, 1110.

<sup>84</sup> Note 12 of Savos'kin and Kazantsev, *op.cit.* note 71, 1110: law of the Cheliabinsk region of November 28, 2002 N 114-ZO (as amended on February 12, 2013) “*O transportnom naloge* [On transport tax],” 134 *Iuzhnoural'skaiia Panorama* (2002) no page given.

<sup>85</sup> Savos'kin and Kazantsev, *op.cit.* note 71, 1110.

governor, Sergei Eroschenko, for approval by the regional parliament. Then a new governor, Sergei Levchenko, was elected and inaugurated. Levchenko withdrew the nominations, on the pretext that he needed to get acquainted with their details. In January 2016 three of the four withdrawn candidates—Alexei Petrov, judge of the Regional Commercial (*Arbitrazh*) Court, Nikolai Sedykh and Oleg Trankevich, a judge of the Irkutsk garrison military court—brought a administrative (judicial review) case against Levchenko in the Kirov District Court.<sup>86</sup> On 21 January 2016 the Court refused to satisfy the claim, asserting the governor had the right to withdraw candidate nominations from the legislature. Although one online news outlet suggested that there might be an appeal against this decision,<sup>87</sup> there is no report of any.

We thus have three clear examples where in recent years, either from malign positive action or deliberate inaction, the regional executive, often supported by the regional legislature, has brought the activity of a regional constitutional or charter court to a halt. As the current authors postulated previously:

It is extremely tempting to suggest that, ironically, such resistance to the existence of a charter court by the head of the regional executive strongly emphasises the importance of such a court and the significant role which it would play in supporting rule of law, separation of powers, and the rights of the individual, particularly against executive encroachment.<sup>88</sup>

## **7 The Fightback—the Movement to Strengthen and Expand Regional Constitutional Justice**

This sidelining and abolishing constitutional and charter courts by legislative and executive

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<sup>86</sup> Information from Khamiduppina, *op.cit.* note 52.

<sup>87</sup> No author given, “*Isk k gubernatoru za zatiagivanie sozdaniia Ustavnogo suda otklonili v Irkutske* [Lawsuit against the governor for delaying the creation of the Charter Court rejected in Irkutsk]” *IRK.ru* 21 January 2016 available at <<https://www.irk.ru/news/20160121/reject/>>.

<sup>88</sup> Henderson and Belykh *op.cit.* note 11, 11.



branches of power—described as ‘alarming’ by Savos’kin and Kazantsev<sup>89</sup>—has not been accepted quietly. It seems to have spurred a vociferous defense of the courts, in particular stressing the importance of their role in relation to separation of powers and the rule of law. As Savos’kin and Kazantsev note, “the existence of a conflict between the legislative and judicial bodies is a perfectly understandable and normal state of affairs from the point of view of the theory of separation of powers. Moreover, this is evidence of the actual functioning of the principle of separation of powers, as well as a sign of real democracy.”<sup>90</sup> They and others have taken to print to educate those who would rather be regional autocrats.

Some of this seeming campaign to raise awareness of the value of constitution and charter courts was clearly motivated by the events in Chelabinsk, but there were earlier precursors. Aleksandr Mikhailovich Tsaliev informs us that a Resolution was adopted at the All-Russian Congress of Judges of 16 December 2012 which recognized the important role of such courts in assisting guarantee of citizens’ rights through their judicial protection.<sup>91</sup>

Also in 2012, as part of her advocacy for a charter court to be established in the Tambov region, Olga V. Belianskaia cited the important function of constitutional and charter courts in regional law making, as they police whether or not regional legislation conforms to the relevant constitution or charter.<sup>92</sup>

However, the high-handed action of the Acting Governor in Chelabinsk abolishing its

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<sup>89</sup> Savos’kin and Kazantsev, *op.cit.* note 71, 1109: “At the same time, in 2014, alarming [*trevozhnye*] trends evidenced the potential for the abolition of constitutional (charter) courts in certain constituent entities of the Russian Federation.”

<sup>90</sup> *Ibid.*, 1110.

<sup>91</sup> “*O sostoiianii sudebnoi sistemy Rossiiskoi Federatsii i osnovnykh napravleniakh ee razvitiia v 2012-2016 godakh* [On the state of the judicial system of the Russian Federation and its main directions for its development in 2012-2016,” cited in Aleksandr Mikhailovich Tsaliev, “*Zakonkdatel’noe i organizatsionno-prakticheskoe obespechenie sozdaniia i razvitiia konstitutsionnykh (ustavnykh) sudov v sub”ektakh RF* [Legislative and organizational-practical support for the creation and development of constitutional (charter) courts in the subjects of the Russian Federation],” 3 *Iuridicheskaiia Nauka* (2013), 66-71 at 69.

<sup>92</sup> Olga Viktorovna Belianskaia, “K voprosu o neobkhodimosti sozdaniia ustavnogo suda Tambovskoi Oblasti [On the issue of the need to create a charter court of the Tambov region],” 12(116) *Vestnik Tambovskogo Universiteta*, 481-6 at 483.

charter court in 2014 prompted pointed and scathing comment. In June of that year Aleksandr Vladimirovich Savos'kin and Anton Olegovich Kazantsev published a joint article entitled "Is It Possible to Abolish the Constitutional (Charter) Court of a Constituent Entity of the Russian Federation?"<sup>93</sup> These authors are no lightweights: Savos'kin has the degree of Candidate of Juridical Sciences, and is an associate professor at the Ural State Economy University and adviser to the judges at the Sverdlovsk Charter Court<sup>94</sup>; Kazantsev, also a Candidate of Juridical Sciences, is Deputy Chairman of that Court.<sup>95</sup> Their carefully deduced conclusion was that the way in which the Chelabinsk court was abolished was absolutely illegal. The same conclusion was expressed again by Savos'kin, publishing jointly with Anatolii Tikhanovich Karasev, Professor of the Department of Constitutional Law at the Ural State Juridical Academy (now University).<sup>96</sup>

The main reasoning is as follows.<sup>97</sup> Although according to the 1996 FCL on the Judicial System constitutional and charter courts of federation subjects are themselves not federal courts, they are included in the single judicial system of the Russian Federation, and, importantly, their judges have the same legal status as all other judges, which means that there are a number of federal laws which limit the powers of regional executives and legislators in respect to them.

Article 17(2) of the 1996 FCL on the Judicial System gives federation subjects the power to create and abolish constitutional and charter courts. The same FCL establishes the principles for creating such a court, but gives no other specifications. According to the way the Russian codified system works, where there is no precise legal rule—"lex specialis"<sup>98</sup>—then general norms are applied. Article 17(3) of the FCL makes it clear that a court cannot be abolished if the

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<sup>93</sup> Savos'kin and Kazantsev, *op.cit.* note 71.

<sup>94</sup> *Kandidat* of Juridical Sciences, adviser to the bench, Sverdlovsk Region Charter Court.

<sup>95</sup> As well as being a *Kandidat* of Juridical Sciences.

<sup>96</sup> Anatolii Tikhanovich Karasev and Aleksandr Vladimirovich Savos'kin, "K voprosu ob uprazhnenii ustavnogo suda Cheliabinskoi oblasti [On The Question of the Abrogation of the Cheliabinsk Charter Court]," 2(45) *Problemy Prava* (2014), 36-40.

<sup>97</sup> The following argument is taken from Savos'kin and Kazantsev, *op.cit.* note 71, 1111-14.

<sup>98</sup> For a brief summary of the rules of interpretation in the Russian codified system see Maria Yefremova, Svetlana Yakovleva and Jane Henderson, *Contract Law in Russia* (Hart Publishing, Oxford, Portland Oregon, 2014), 30-32.

issues which it would adjudicate are not simultaneously transferred to the jurisdiction of another court. Transfer of an abolished court's jurisdiction to a nonjudicial body is in clear breach of this provision. Savos'kin and Kazantsev note<sup>99</sup> that when in 2014 the Highest Commercial Court was abolished, to be merged with the existing Supreme Court into a new Supreme Court of the Russian Federation,<sup>100</sup> the jurisdiction of the Highest Commercial Court was specifically transferred to the new Supreme Court. This was made explicit in Article 2(2) of the Federal Law on the Amendment to the Constitution which dealt with the necessary constitutional changes to allow the establishment of the new Supreme Court RF.<sup>101</sup>

“Analysis of federal laws on the abolition of courts (and there are about a hundred of them) clearly shows that all laws, without exception, contain rules on the transfer of authority.”<sup>102</sup> Savos'kin and Kazantsev draw attention to the three (failed) attempts by the St Petersburg legislature to abolish the St Petersburg charter court, where each time the legislature at least made an attempt to transfer jurisdiction. Unfortunately—and wrongly—in two of the three they attempted to transfer jurisdiction to the legislature itself. In the other attempt,

introduced by MP Yuri Karpenko to the Legislative Assembly of St. Petersburg in 2007, there was a provision on transferring the powers of the Charter Court to the jurisdiction of the St. Petersburg City Court. However, already at the stage of preparation for the first reading, the project received a negative legal opinion.<sup>103</sup>

A further article by Kazantsev was published in 2015, on “The Right to Resign as a Guarantee of the Constitutional Principle of the Independence of Judges of Constitutional (Charter) Courts in

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<sup>99</sup> Savos'kin and Kazantsev, *op.cit.* note 69, 1111.

<sup>100</sup> See Jane Henderson, “Developments in Russia,” 21(2) *European Public Law* (2015) 229-238, 233ff.

<sup>101</sup> Federal Law on the Amendment of the Constitution of the Russian Federation of 5 February 2014 No 2-FKZ “On the Supreme Court of the Russian Federation and the Prosecutor's Office of the Russian Federation.” SZ RF 2014 No.6. Art. 548.

<sup>102</sup> Savos'kin and Kazantsev, *op.cit.* note 71, 1111.

<sup>103</sup> *Ibid.*

the Context of the ‘Cheliabinsk Case’”.<sup>104</sup> Here he reiterated that the abolition of the Cheliabinsk charter court was unlawful, and noted that the court judges had filed a lawsuit in the Cheliabinsk Central District Court claiming severance pay and compensation, based on Articles 15 and 19 of the 1992 law “On the Status of Judges in the Russian Federation”. The Central District Court found that the judges had neither resigned nor retired, so were not entitled to severance pay and compensation.<sup>105</sup> An appeal to the Cheliabinsk Regional Court left this unchanged, and confirmed that the judges’ powers were terminated on grounds other than retirement.<sup>106</sup> The legislation<sup>107</sup> which abolished the judges’ position thus had wrongfully deprived them of rights established in federal law.

The judges were not the only people adversely impacted. Cheliabinsk residents were deprived of an additional and effective remedy.<sup>108</sup> This most obviously affected those whose complaints had already been accepted by the court. Savos’kin and Kazantsev were careful to confirm that it was not impossible for a regional constitutional or charter court to be abolished, but emphasised that such abolition must be done through a correct legislative procedure, including suitable transfer of jurisdiction. Acting otherwise is arbitrary, and

in violation of the constitutional principle of the rule of law and clear evidence of violation of the principle of separation of powers, when on the regional level, one branch of government (legislative) not only interferes with but destroys the other (judicial) branch of power.”<sup>109</sup>

So far the Cheliabinsk situation is unresolved. However, our first ‘attacked’ court is now being

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<sup>104</sup> Anton Olegovich Kazantsev, “*Pravo na otstavku kak garantiia konstitutsionnogo printsipa nezavisimosti sudei konstitutsionnykh (ustavnykh) sudov v kontekste ‘Chelabinskogo dela’*,” 2 *Zhurnal Konstitutsionnogo Pravosudiia* (2015), 34-38, available at <<http://xn----7sbbaj7auwnffhk.xn--p1ai/article/16633>>.

<sup>105</sup> Decision of the Central District Court of Cheliabinsk of 11 June 2014 in case N 2-4309/2014.

<sup>106</sup> Case N 11-9327 / 2014

<sup>107</sup> Resolution of the Legislative Assembly of the Cheliabinsk Region of 27 February 2014 No. 1881

<sup>108</sup> Noted in Savos’kin and Kazantsev, *op.cit.* note 71.

<sup>109</sup> *Ibid.*, 1113

resurrected, albeit somewhat falteringly.

On 26 February 2016 it was reported in the *Baikal Daily* that the Constitutional Court of Buriatiia would “return to life”,<sup>110</sup> although in practice it would still be inactive. As noted above (text to note 74 and following) in 2015 the suspension of the Buriatiia Constitutional Court had been challenged in Constitutional Court RF by State Duma deputies. The CCRF recommended a choice between either complete abolition, or funding the court so that it could resume work. Following this, Boris Botoev, Chairman of the Committee on the Rule of Law and State of the People’s *Khural* (the Republic of Buriatiia legislature), introduced a bill to the People’s *Khural* to resuscitate the court. He had the support of two of the six committees in the *Khural*, as well as comments from the republic’s government and Audit Chamber. There was some heated discussion in the People’s *Khural*, with reference to the cost and how well Buriatiia had been functioning without an active court, but the bill was adopted at first reading after Botoev had lambasted his fellow deputies on lack of principle.

You can not treat the Constitutional Court as a cash cow. You give 15 litres of milk to feed, it gave one litre to kill. Everything is changed. Even if the Constitutional Court is simply standing and guarding the legal obligations of our citizens as a watchdog, this is also a big plus. But one should not approach the third [judicial] power in such a utilitarian way. You are right. Let’s postpone it, take [the vote] in the autumn. Do as your conscience dictates,” Boris Botoev exhaled doomfully.<sup>111</sup>

It appears that his exasperation persuaded the legislature at least to adopt the relevant law.

The issue was further discussed at the last session of the Buriat People’s *Khural* for 2017, held on 30 November.<sup>112</sup> There some deputies questioned the need to revive the republic’s

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<sup>110</sup> Elena Buerachnaia, “*Konstitutsionnyi sud Buriatii vozvrashchaiut k zhizni, khotia on budet bezdeistvovat*” [Constitutional Court of Buriatia returns to life, although it will remain inactive],” *Baikal Daily* 26 February 2016, available online at <<https://www.baikal-daily.ru/news/19/196012/>>.

<sup>111</sup> *Ibid.*

<sup>112</sup> Tatiana Rodiona, “*‘Zhiven i ne bedstvuem’: Buriatskie deputaty usomnilis’ v neobkhodimosti ‘reanimirovat’ Konstitutsionnyi sud*” [‘We live and we do not suffer’: Buriat deputies doubted the need to ‘revive’ the Constitutional

constitutional court. The context for reopening the issue centred round the process for nominating and appointing the court chairman and judges. However, the court received strong support, not only from many individual deputies (including one, Communist Bair Tsyrenov, who had repeatedly picketed for its reinstatement), but also from the *Khural*'s committees, the Prosecutor's Office, Accounting Chamber, and Ministry of Justice representation in Buriatiia. The relevant legislation was immediately adopted in two readings, and signed into law by the republic's governor.

At the post-session press conference, Botoev himself was questioned whether he would become court chairman, but denied any earlier invitation for that role. He chided the journalists as running ahead of events. He also noted that he expected the court to come into existence in spring 2018, having "been 'neither alive nor dead' for four years".<sup>113</sup> A former member of the Social Chamber (*Obshchestvannii Palata*), Pavel Dudin, spoke in support of the court, saying that in its 17 years existence it had issued more than a hundred judgments and rulings which was quite a few, in the circumstances. He also said, in relation to the cost of the court:

We talked with our colleagues, judges of the St. Petersburg charter court, and they said that by the same logic one can talk about an atomic submarine. It also 'eats' a lot of money—more than the budget of the average subject, and has never been deployed, but this does not mean that it should be dismantled and the money targeted at something more substantial. No, the submarine solves an important strategic objective, and here the constitutional court is also called upon to solve an important objective—ensuring the rights of citizens.<sup>114</sup>

## **8 What These Disputes Might Indicate about Rule of Law in Russia**

We now come to consider what the described disputes tell us about the development in Russia of the rule of law, and in particular, the reception of the principle of separation of powers.

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Court],” *infpol* 1 December 2017, available at <<https://www.infpol.ru/news/society/137114-zhiviyem-i-ne-bedstvuem-buryatskie-deputaty-usomnilis-v-neobkhodimosti-reanimirovat-konstitutsionnyy-/>>.

<sup>113</sup> *Ibid.*

<sup>114</sup> *Ibid.*

It seems to us that the message is clear. Although geographically limited in scope, constitutional and charter courts have shown themselves to be sufficiently effective in exercising constitutional control over the other regional branches of state power as to be perceived as a threat—in particular by regional executive heads. As we have seen, in three instances the regional executive has tried to obliterate this threat by removing the court. However, rather than apathetically accepting that they are losers in a regional power struggle, the courts’ supporters have rallied and fought back with well-articulated arguments grounded in Russia’s constitutional law to explain the illegitimacy of the executive actions. We thus have the wonderful irony that executive activity illegally attacking the courts has actually shown the depth and strength of legal consciousness in the regions as the defenders of the principle of separation of powers come to the fore.

But the fact that these conflicts could arise strongly points up the need for practical steps to support the courts and their existence. This is not a new concern but has been a recurring theme. According to Aleksandr M. Tsaliev, writing in 2013,<sup>115</sup> the Advisory Council of the Chairmen of the Constitutional (Charter) Control Authorities in the Russian Federation had appealed in 2001 to the President, the Federal Assembly, and the federation subjects’ legislative and executive agencies, stressing the necessity to create a single system of constitutional justice, via the CCRF and federation subjects’ constitutional and charter courts. This would require making the latter mandatory, and developing sufficient legislative, organizational and practical support for them. As Tsaliev perceptively noted, “as practice shows, firstly, no one ever wants voluntarily to share power, and secondly, no one is interested in creating an authority that oversees their decisions.”<sup>116</sup> So the system of regional constitutional supervision would inevitably remain underdeveloped unless federal legislation imposed a duty on each region to establish an appropriate court.

Tsaliev himself published a draft Federal Law “On the General Principles of the Organization and Operation of Constitutional (Charter ) Courts of the subjects of the Russian

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<sup>115</sup> Tsaliev, *op.cit.* note 91, 69.

<sup>116</sup> *Ibid.*

Federation”.<sup>117</sup> Other authors, for example, Victor N. Demidov,<sup>118</sup> and Vladimir B. Evdokimov (writing with Timur A. Tukhvatullin)<sup>119</sup> have also highlighted the need for amendment to the 1996 FCL on the Judicial System to make the establishment of a constitutional or charter court compulsory. Olga Belianskaia advocated adoption at federal level of a model statute to define the courts’ roles, along with the encouragement of some federal funding.<sup>120</sup>

In a paper published in 2015 Ignatenko (et al.) drawing on experience of the failed attempt in 2014 to establish of an Irkutsk Regional Charter Court concluded that comprehensive federal regulation is required, particularly to define the status of the regional constitutional and charter court judges.<sup>121</sup> In the same year Evdokimov and Tukhvatullin, lamenting the lack of courts in many regions, strongly advocated a federal law to regulate their activity, basing their argument on the principle of separation of powers, and Constitution RF Articles 45 and 46 guaranteeing judicial protection of rights and freedoms of man and citizen. Alongside this they advocated appropriate amendments (and re-titling) of the federal law “On the Principles of Establishing Legislative (Representative) and Executive Bodies of State Power in the Subject of the Russian

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<sup>117</sup> Cited in note 10 of *ibid.* with reference to Aleksandr Mikhailovich Tsaliev, “*Konstitutsionnye (ustavnye) sudy sub’ektov Rossiiskoi Federatsii: ot sushchego k dolzhnomu* [Constitutional (Charter) Courts of the Subjects of the Russian Federation: from what does to what must exist],” 2-3 *Rossiiskoe pravo: obrazovanie, praktika, nauka* (2013).

<sup>118</sup> Demidov, *op.cit.* note 66, 18.

<sup>119</sup> Vladimir B. Evdokimov and Timur A. Tukhvatullin, “O neobkhodimosti sozdaniia konstitutsionnykh (ustavnykh) sudov v sub’ektakh Rossiiskoi Federatsii [On the Necessity to Establish Constitutional (Charter) Courts in Subjects of the Russian Federation],” 2 *Pravo. Zhurnal Vysshei Shkoly Ekonomiki* (2014), 112-21. The authors are, respectively, a professor and research fellow at the Research Institute of the Academy of the Procurator General’s Office of the Russian Federation.

<sup>120</sup> Belianskaia, *op.cit.* note 92, 484.

<sup>121</sup> Viktor Vasil’evich Ignatenko, Aleksei Aleksandrovich Petrov and Svetlana Vasil’eva Praskova, “*Uchrezhdenie konstitutsionnogo (ustavnogo) suda sub’ekta Rossiiskoi Federatsii: Osnovnye pravovye problem i puti ikh resheniia (na opyte Irkuskoi oblasti). Chast’ I* [Establishment of a Constitutional (Charter) Court of a Subject of the Russian Federation: Basic Legal Problems and Ways for their Solution (On the Experience of the Irkutsk Region). Part 1],” 5 *Zhurnal Konstitutsionnogo Pravosudiia* (2015), 20-8.



Federation” noted above,<sup>122</sup> to include provisions on regional constitutional courts.<sup>123</sup>

The following year, 2016, Anatolii T. Karasev and Aleksandr V. Savos’kin published their article cited above<sup>124</sup> “Do we need Constitutional justice in the subjects of the Russian Federation?” They answered their own question with a resounding “Yes”. Their main justifications were the constitutional principle of unity of legal space, the utility of specialist courts to supervise constitutionality, and the fact that such courts solve problems which affect many people, thus removing social tension. The authors postulated that the wide impact of the courts’ activity probably meant they would actually create a net saving of resources. They also cited a positive opinion of the CCRF Chairman, Valerii D. Zorkin, that the federation subjects’ constitutional and charter courts, “act as mediators in the relations between the authorities and society and at the same time are a specific guarantee for the government and the country as a whole.”<sup>125</sup> Other authors have also stressed the importance of the courts in respect to separation and balance of powers.<sup>126</sup>

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<sup>122</sup> See text to note 12.

<sup>123</sup> Evdokimov and Tukhvatullin, *op.cit.* note 119. The authors also criticize alternative suggestions such as establishing bodies of constitutional justice within federal districts.

<sup>124</sup> Karasev and Savos’kin, *op.cit.* note 96.

<sup>125</sup> Valerii Dmitrievich Zor’kin, “*Informatsiia o rabote Konsul’tativnogo Soveta predsedatei konstitutsionnykh (ustavnykh) sudov sub”ektov Rossiiskoi Federatsii* [Information on the work of the Advisory Council of the Chairs of Constitutional (Charter) Courts of Subjects of the Russian Federation,” *Vestnik Konstitutsionnogo Sud Respubliki Tatarstan: spets. vypusk* (2010), 13 as cited in Anatolii Tikhonovich Karasev and Aleksandr Vladimirovich Savos’kin, “*Nuzhna li Konstitutsionnaia Iustitsiia v Sub”ektakh Rossiiskoi Federatsii* [Do we need Constitutional justice in the subjects of the Russian Federation],” in Farkhat Gusmanovich Khusnutdinov et.al., (eds.), *Aktual’nye Problemy Teorii i Praktiki Konstitutsionnogo Sudoproizvodstva (vysk. 11)* [Actual problems of theory and practice of constitutional court proceedings (issue 11)] (Konstitutsionnyi Sud Respubliki Tatarstan, Kazan’, 2016), 138-143, 138, available at < [ks.tatarstan.ru/file/Сборник%20научных%20трудов%20\(выпуск%2011\).pdf](http://ks.tatarstan.ru/file/Сборник%20научных%20трудов%20(выпуск%2011).pdf)>.

<sup>126</sup> Gulnara Rushanovna Khabibullina, “*Printsip Razdeleniia Vlastei v Pravovykh Pozitsiiakh konstitutsionnykh i ustavnykh sudov sub”ektov Rossiiskoi Federatsii* [The Principle of Separation of Powers in the Legal Positions of Constitutional and Charter Courts of Subjects of the Russian Federation],” in Khusnutdinov et.al., note 125, 263-9; Blaginina, “*Konstitutsionno-pravovye Osnovaniia Sozdaniia konstitutsionnykh (ustavnykh) sudov sub”ektov Rossiiskoi Federatsii* [The Constitutional-Legal Foundations of the Establishment of Constitutional (Charter) Courts of Subjects of the Russian Federation],” 16(25) *Ekonomika i Sotsium* (2016) available at <[http://iupr.ru/domains\\_data/files/zurnal\\_25/BLAGININA%20N.A.%20\(Aktualnye%20voprosy%20politiki%20i%20prava\).pdf](http://iupr.ru/domains_data/files/zurnal_25/BLAGININA%20N.A.%20(Aktualnye%20voprosy%20politiki%20i%20prava).pdf)>. See also Svetlana Vasil’evna Maslova, “*Nekotorye voprosy vzaimodeistviia konstitutsionnykh (ustavnykh) sudov sub”ektov Rossiiskoi Federatsii s organami Prokuratury Rossiiskoi Federatsii* [Some Questions

Also in 2016 Iulian Nikolaevich Usenko analysed the courts' role in resolving issues of accountability of regional authorities. He suggested that this could be expanded to include a role in the expression of no confidence by the regional legislature in the regional executive.<sup>127</sup> On an analogous theme, in the same year Aleksandr M. Tsaliev promoted the role of constitutional and charter courts in combating corruption in their regions.<sup>128</sup>

So far, those advocating that Russia's federation subjects should have a duty to create a court have not succeeded in their aim. At least up to the time of writing in early 2018, the federal authorities have been reluctant to impose such a duty. However, there is not a complete lack of interest. For example, on 14 December 2017 the Chairman of the Federation Council Committee on Constitutional Legislation and State Building, Andrei Klishas, hosted a roundtable on the "Implementation of decisions of the agencies of constitutional justice: the state of legislation and prospects for its development".<sup>129</sup> The event was organized on the initiative of the Sakha (Iakutiia) Constitutional Court, whose Chairman had met with Senator Klishas and others the previous month, discussed issues relating to constitutional justice in Russia's regions, and formulated the plan to have the Round Table.<sup>130</sup> It was attended by a range of representatives, including those from the Ministry of Justice, the Prosecutor General's Office, regional government bodies, federation subjects' constitutional and charter courts, the Public Chamber, and the scientific community (including one of the current article's authors).

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of Interaction of Constitutional (Charter) Courts of the Subjects of the Russian Federation Prosecutor's Office of Russian Federation],” 3(14) *Mariiskii Iuridicheskii Vestnik* (2015), 65-8 available at <<https://cyberleninka.ru/article/n/nekotorye-voprosy-vzaimodeystviya-konstitutsionnyh-ustavnyh-sudov-subektov-rossiyskoy-federatsii-s-organami-prokuratury-rossiyskoy>>.

<sup>127</sup> Iulian Nikolaevich Usenko, “*K voprosu o roli konstitutsionnykh (ustavnykh) sudov v mekhanizme otvetstvennosti organov publichnoi vlasti sub"ektov Rossiiskoi Federatsii* [On the Issue of the Role of Constitutional (Charter) Courts in the Mechanism of Responsibility of Public Authorities of Subjects of the Russian Federation],” 2 *Gosudarstvo i Pravo* (2016), 37-42 available at <<https://cyberleninka.ru/article/n/k-voprosu-o-rol-konstitutsionnyh-ustavnyh-sudov-v-mehanizme-otvetstvennosti-organov-publichnoy-vlasti-subektov-rossiyskoy-federatsii>>.

<sup>128</sup> Aleksandr Mikhailovich Tsaliev, “*Konstitutsionnye (ustvnye) sudy v mekhanizme protivodeistviia korruptsii* [Constitutional (charter) courts in the mechanism for combating corruption],” 7 *Rossiiskaia Iustitsiia* (2016), 4-7.

<sup>129</sup> See <<http://www.council.gov.ru/events/committees/87327/>>.

<sup>130</sup> See <<http://www.council.gov.ru/events/news/86598/>> .

## 9 Conclusion

The first article of the 1993 Constitution of the Russian Federation (hereinafter, Constitution RF) defines Russia as a “democratic federated rule of law state (правовое государство; *pravovoe gosudarstvo*) with a republic form of government.”<sup>131</sup> The practical ramifications of aspiring to be a rule of law state are still being realized in Russia, and progress overall is inconsistent. However, when we examine the issue from the perspective of Russia’s regions we see some examples of successful implementation of regional courts enforcing regional rights, and, as Trochev put it, being bodies which “...uphold democratic values, protect individual rights, and serve as a bulwark against the return to the totalitarian past.”<sup>132</sup> Some would-be regional dictators have balked at being subject to regional constitutional control, and have implemented the simplistic solution of getting rid of their regional constitutional or charter court. However, this high-handed approach has triggered a vociferous defence of the role of such courts, and indeed flagged up how important the courts are, particularly in relation to separation of powers. This strong defence of the courts stands as evidence that this important principle has indeed entered the legal consciousness of those striving to improve the rule of law in regional Russia. The authors share with them the hope that the federal authorities will take steps to strengthen and regularise the role of the courts, by amending the 1996 FCL on the Judicial System to mandate rather than merely empower Russia’s regions to establish courts to implement regional constitutional oversight, on analogy with the equivalent legislation on the regional ombudsman. Similarly, a federal definition of the role and rights of the relevant judges would strengthen their position. This would allow for more ‘bottom-up’ realisation of the high aims of Russian constitutional law.

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<sup>131</sup> Butler, *op.cit.* note 1, 4.

<sup>132</sup> Trochev, *op.cit.* note 50, 514.